

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division**

UNITED STATES, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	No. 1:23-cv-00108-LMB-JFA
	)	
GOOGLE LLC,	)	
	)	
Defendant.	)	

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO SEAL**

Pursuant to Local Civil Rule 5, and the Protective Order (ECF No. 98 and Modified Protective Order, ECF No. 203), Plaintiffs, through their undersigned counsel, hereby respectfully submit the instant memorandum of law in support of their motion to seal certain portions of and certain exhibits to their Sur-Reply In Opposition to Google's Motion to Strike the Jury Demand and to Dismiss ("Sur-Reply"). The redacted portions contain information designated by Google or a third party as highly confidential or confidential under the parties' protective order (ECF No. 98 ¶ 23; ECF No. 203 (Modified Protective Order)). The unredacted Sur-reply and exhibits have been filed electronically using the sealed filing events.

**INTRODUCTION**

Certain portions of and exhibits to Plaintiffs' Sur-reply reference material that Google or a third party has designated as confidential or highly confidential. Pursuant to paragraph 23 of the Protective Order, through this motion Plaintiffs inform the Court of the confidentiality designations of these materials and request that the Court seal the redacted portions of the Sur-reply and exhibits, and maintain the redacted Sur-reply and exhibits on the public docket, in order to provide Google and third parties sufficient time to provide the Court with support for the

need to seal the redacted portions of the Sur-reply and exhibits. At this time, Plaintiffs take no position on the propriety of the underlying confidentiality designations.

### **ARGUMENT**

Public access to judicial records is “protected both by the common law and the First Amendment.” *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). “The common law presumes a right of the public to inspect and copy ‘all judicial records and documents.’” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978)). The common law presumption in favor of public access can be overcome only by a showing that a litigant has “some significant interest that outweighs the presumption.” *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988). Accordingly, before ordering the sealing of a document, a district court must “(1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the document[], and (3) provide specific reasons and factual findings supporting its decision to seal the document[] and for rejecting the alternatives.” *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 302 (4th Cir. 2000); *see also* Local Civ. R. 5(C).

Plaintiffs file this motion because the material was designated as confidential or highly confidential by Google or a third party in accordance with their obligations under paragraph 23 of the Protective Order. As stated in the notice filed concurrently with this memorandum, any interested member of the public and any other party may indicate their position on the motion.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court seal the portions of Plaintiffs’ Sur-reply that have been redacted, permit the redacted versions of the exhibits to Plaintiffs’ Sur-reply to remain on the public docket, and permit the exhibits filed under seal to

remain under seal until such time as responsive briefs are filed and considered by the Court and remain under seal thereafter as the Court deems appropriate.

Dated: June 5, 2024

Respectfully submitted,

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